

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-009410

09/29/2017

HON. RANDALL H. WARNER

CLERK OF THE COURT
K. Ballard
Deputy

MAGDALENA GOMEZ, et al.

KATHLEEN MCCAFFREY

v.

ROAD MACHINERY L L C, et al.

JAMES K KLOSS

WILLIAM H DOYLE
MARGARET K HOFFMASTER
JEREMY C JOHNSON

MATTER TAKEN UNDER ADVISEMENT
TRIAL MANAGEMENT CONFERENCE

Courtroom: ECB-912

2:31 p.m. This is the time set for a trial management conference. Plaintiff Magdalena Gomez (individually and on behalf of Aleyda Gomez, Ulises Gomez and Zayda Gomez, legal heirs of Decedent Martin Gomez) is represented by Counsel Kathleen McCaffrey. Defendant Road Machinery, LLC is represented by Counsel Scott McClure (appearing in place of James K. Kloss). Defendant Capital Partners Equipment, LLC is represented by Counsel D. Reid Garrey (appearing in place of Margaret Khalil Hoffmaster). Defendant JRB Attachments, LLC is represented by Counsel Jeremy C. Johnson, Sean M. Moore and John T. Masterson. Defendants Rytan, LLC and Ryan Nichols are represented by Counsel William H. Doyle and Brian R. Hauser.

A record of the proceedings is made digitally in lieu of a court reporter.

Discussion is held regarding the claims in the case.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-009410

09/29/2017

Non-parties at fault are briefly discussed.

Discussion is held regarding alleged comparative fault of the decedent. Plaintiff may file a motion on this issue if necessary.

Discussion is held regarding the length of the trial. This trial is scheduled for 15 days beginning on October 23, 2017.

Trial hours and days are normally 9:30 a.m. to 4:30 p.m. (with a lunch recess from noon to 1:30 p.m. and two 15-minute recesses, daily), Monday through Thursday.

The court will allocate trial time in this matter. The court will advise the parties of their allotted trial time on the first day of trial. This time includes the counsel's individual voir dire, opening statements, closing arguments, and any time spent examining witnesses.

The parties are advised to have witnesses prepared and ready to testify at all times during the trial so that the jury's time is used efficiently. Failure to adhere to this instruction will result in the lost trial time being charged against the party failing to present a witness.

The electronic equipment available in the courtroom is briefly addressed. Counsel are encouraged to schedule an appointment with the court's bailiff to become familiar with the equipment.

The Rule of Exclusion of Witnesses is invoked by the parties.

Defendants Rytan and Nicholas request the presence of a court reporter for the trial.

NOTE: All court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

The court will prescreen the jury regarding the length of trial. The court addresses counsel regarding logistical issues pertaining to the prescreening process.

Counsel shall be present in this courtroom at **9:00 a.m. on October 23, 2017**. Thereafter, the court, its staff and all parties will proceed to the jury commissioner's office to conduct the prescreening process.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-009410

09/29/2017

The voir dire process is briefly reviewed.

Objections to exhibits will be resolved during the course of trial. Additionally, admission of exhibits, whether through stipulation or for lack of preserving an objection in the Joint Pretrial Statement, will also be addressed during the trial.

The deadline for delivery of trial exhibits to the courtroom clerk is affirmed: **October 2, 2017**. This is a firm deadline.

The use of juror notebooks is addressed.

With regard to the use of exhibits in opening statements, the parties shall provide those exhibits to the opposing side 24 hours in advance, including any exhibits or illustrations to be used in any presentation. Any exhibits that are not objected to may be used in opening statements.

The jury will consist of 8 jurors and 3 alternates for a total of 11 jurors.

With regard to deposition designation objections, the court will resolve them at trial as follows. By 4:30 p.m. the day before a party plans to read deposition testimony, that party shall provide the court with a hard copy of the deposition transcript with the designated portions highlighted in one color, cross-designations highlighted in another color, and the objections written in the margins. The court will rule on any objections by the next day.

If the parties intend to present a deposition via video, the parties shall present the designation objections two days in advance to allow time for editing.

The court will provide counsel a draft set of preliminary jury instructions the first morning of trial. Any objections will be resolved prior to presentation to the jury. The final jury instructions will be resolved during the course of trial.

Counsel may file any trial memoranda they deem appropriate in support of Rule 50 motions, complex jury issues or other legal issues.

The proposed case summary is briefly addressed.

Plaintiff's counsel requests a Rule 702 hearing regarding defense witness Mr. Barnett – the OSHA investigator – to preclude him from providing expert testimony. Court and counsel discuss the same.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-009410

09/29/2017

To the extent Plaintiff is requesting a *Daubert* hearing,

IT IS ORDERED denying that request. Objections to Mr. Barnett's testimony will be dealt with during his testimony.

Discussion is held regarding the alternates deliberating. The parties agree that all jurors will be allowed to deliberate and that an agreement of at least 8 jurors will be necessary to return a verdict if all 11 jurors or 10 jurors remain. Additional agreements as to the number of jurors necessary to return a verdict are contained in the parties' pretrial statement.

With regard to rulings on motions in limine, all denials are without prejudice to raising the issues at trial.

Plaintiffs' August 30, 2017 Motion in Limine #1 Re: Collateral Source is briefly discussed.

IT IS ORDERED granting the Motion.

Oral argument is presented on Plaintiffs' August 30, 2017 Motion in Limine #2 Re: Striking the Opinion Testimony of Salvatore Malaguenara.

IT IS ORDERED denying the Motion.

Oral argument is presented on Plaintiffs' August 30, 2017 Motion in Limine #3 Re: Inadmissibility of the OSHA Report.

IT IS ORDERED denying the Motion.

Plaintiffs' September 1, 2017 Motion in Limine #4 Re: Striking Defendants' Affirmative Defense of State of the Art (A.R.S. §12-683) is briefly addressed.

IT IS ORDERED denying the Motion.

IT IS ORDERED granting Defendants Rytan, LLC and Ryan Nicholas' September 1, 2017 Motion in Limine No. 1 Regarding Gilbert Antone's Intoxicated Condition on the Job Site as unopposed.

IT IS ORDERED granting Defendants Rytan, LLC and Ryan Nicholas' September 1, 2017 Motion in Limine No. 2 Regarding August 1, 2012 OSHA Tribal Warning as unopposed.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-009410

09/29/2017

Oral argument is presented on Defendant JRB Attachments, LLC's September 1, 2017 Motion in Limine Regarding the Wedgelock.

IT IS ORDERED taking this motion under advisement.

Oral argument is presented on Defendant JRB Attachments, LLC's September 1, 2017 Motion in Limine Regarding Visibility of Coupler.

IT IS ORDERED denying the Motion.

Counsel for Defendant JRB Attachments advises the court that the "product-design" Defendants and Plaintiff have agreed to a high/low agreement, but have not yet executed the same. Court and counsel briefly discuss the same.

Plaintiff's counsel addresses the court regarding the interpretation of contract jury instruction. Court and counsel briefly discuss the same.

3:24 p.m. Matter concludes.